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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 MARK NUNEZ, et al.,

5 Plaintiffs,

6 v.

11 Civ. 5845 (LTS)

7 CITY OF NEW YORK, et al.,

Remote Conference

8 Defendants.

9 -----x  
10 New York, N.Y.  
11 May 24, 2022  
12 2:30 p.m.

13 Before:

14 HON. LAURA TAYLOR SWAIN,

15 District Judge

16 APPEARANCES

17 THE LEGAL AID SOCIETY  
18 Attorneys for Plaintiffs  
19 BY: MARY LYNNE WERLWAS

20 EMERY CELLI BRINCKERHOFF & ABADY, LLP  
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1 (The Court and all parties present remotely)

2 THE DEPUTY CLERK: This case is Mark Nunez, et Al v  
3 City of New York, et al. The Honorable Chief Judge Laura  
4 Taylor Swain presiding.

5 THE COURT: Good afternoon. We are here today for a  
6 status conference. Today's conference was scheduled to discuss  
7 the City and the Department of Corrections' proposed action  
8 plan filed on May 17th, 2022 at Docket No. 454 as well as the  
9 status of negotiations and any areas of disagreement that exist  
10 among the parties about the content of the proposed plan.

11 I'm now going to ask the video participants to state  
12 their appearances, beginning with the monitor and the deputy  
13 monitor.

14 MR. MARTIN: Yes. Hello, your Honor. My name is  
15 Steve J. Martin, the monitor.

16 THE COURT: Good afternoon, Mr. Martin.

17 MR. MARTIN: Good afternoon.

18 MS. FRIEDBERG: Good afternoon, your Honor. My name  
19 is Anna E. Friedberg, the deputy monitor.

20 THE COURT: And now, counsel for the plaintiffs.

21 MS. WERLWAS: Good afternoon, your Honor. Mary Lynne  
22 Werlwash of the Legal Aid Society Prisoners' Rights Project for  
23 the plaintiffs. And with me in the office is Madison Levin  
24 from the Legal Aid Society. And on the audio is Kayla Simpson  
25 of the Legal Aid Society.

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1                   THE COURT: Good afternoon, Ms. Werlwash, Ms. Levin and  
2 Ms. Simpson.

3                   Ms. Greenberger.

4                   MS. GREENBERGER: Good afternoon, your Honor. This is  
5 Debra Greenberger. I have joined with me on the phone my  
6 colleagues, Jonathan Abedy and Nairuby Beckles.

7                   THE COURT: Good afternoon, Ms. Greenberger, Mr. Abedy  
8 and Ms. Beckles.

9                   And now from the United States Attorney's Office for  
10 the Southern District of New York.

11                  MR. POWELL: Good afternoon, your Honor. My name is  
12 Jeffrey Powell, and I'm appearing on behalf of the government.  
13 And I'm joined today by AUSA Lara Eshkenazi as well.

14                  THE COURT: Good afternoon, Mr. Powell and  
15 Ms. Eshkenazi.

16                  Counsel for the City and the Department of  
17 Corrections.

18                  MS. JOYCE: Good afternoon, your Honor. Kimberly  
19 Joyce from the New York City Law Department for the City of New  
20 York. I have my cocousenl, Cheryl Neufeld sitting off camera  
21 to my left.

22                  MR. MR. MOLINA: Louis A. Molina, commissioner for the  
23 department of corrections.

24                  THE COURT: Good afternoon Mr. Commissioner and good  
25 afternoon Ms. Joyce and Ms. Neufeld.

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1           I greet any other members of the counsel or public who  
2 may be listening in since this is a public proceeding. I ask  
3 counsel who are on video keep their audio muted when they are  
4 not speaking. I see that you have all done that. Thank you  
5 very much.

6           I also remind everyone, both listeners and video  
7 participants, that neither recording or retransmission of any  
8 part of this proceeding is permitted. That is a provision of  
9 the Court's January 19, 2021 standing order and it is also  
10 national judicial conference policy.

11           I'll be calling on each speaker. Each time that you  
12 speak, please make sure that you have been identified by name  
13 for clarity of the record and for the benefit of those who only  
14 have audio access. Please don't interrupt each other or me  
15 during the conference. If we interrupt each other, it's  
16 difficult to create an accurate transcript. But having said  
17 that, and as usual, I apologize in advance for breaking the  
18 rule because I may interrupt if I have questions. If anyone  
19 has any difficulty hearing me or another participant, please  
20 say something right away.

21           I have a couple of introductory remarks.

22           We came together in this case on April 26th, 2022 for  
23 a conference to discuss the monitoring team's special report  
24 issued on March 16th, 2022, which described the patently unsafe  
25 conditions in the jails, provided an overview of the

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1 foundational issues currently facing the City and the  
2 Department and laid out the monitoring team's proposed  
3 recommendations for areas of focus.

4 The commissioner attended the conference and expressed  
5 his commitment to making effective changes, pointing to certain  
6 measures that had already been implemented. At that April 26th  
7 conference, the monitor informed the Court that the monitoring  
8 team was working with the City and the Department to develop an  
9 implementation plan to address the ongoing crisis at Rikers.

10 After much frank discussion, the Court directed the  
11 monitoring team to file the proposed plan within three weeks  
12 time, by May 17th, and encouraged the City, the Department and  
13 the monitoring team to work in a focused way to develop  
14 specific, tangible steps that the City and the Department could  
15 take in the immediate term to address the unstable and unsafe  
16 conditions in the jail, as well as longer term, structural  
17 problems that exist.

18 The Court thanks the monitoring team and the  
19 defendants for their timely submission of a proposed action  
20 plan, which incorporates tangible steps that the City and the  
21 Department have agreed to take in order to ameliorate the  
22 current crisis, also addresses the allocation of responsibility  
23 and directive of specific timelines for compliance. The  
24 proposed action plan and explanatory letter from the monitoring  
25 team are filed at Docket No. 454.

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The Court has also received and reviewed a May 23rd, 2022 status update from the monitoring team, which is filed at Docket No. 458. The monitoring team informs the Court that the City and the Department have begun working toward the implementation of several elements of the proposed action plan to be discussed in greater detail at today's conference.

The monitoring team also informs the Court that the parties have engaged in numerous discussions over the past week about whether the proposed action plan is sufficiently specific about how legal and other structural issues that defendants have previously cited as barriers to effective reform will be overcome in order to implement the measures outlined in the proposed action plan. To put it plainly, the commissioner, the City and the Department must have the necessary tools and authority to support the plan's implementation in a meaningful and timely manner. Confirming that this is the case and ensuring that the plan reflects the accurate scope of resources and authority is of the utmost importance.

I'll now turn to the parties for their views on where we are now, what next steps can be taken, and the timetable on which we can move rapidly to improve the safety situation at Rikers in particular. And I will begin by calling on the monitor and the deputy monitor.

MR. MARTIN: Thank you, your Honor.

I'm going to jettison my early remarks because you

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1 have done such a comprehensive job of setting out what led us  
2 to this point. So I'm simply going to skip over those for the  
3 sake of time.

4 Before I share my remark on the proposed action  
5 plan -- which I acknowledge at the outset is not a completed  
6 plan, which my deputy monitor will address in her review -- let  
7 me share some observations of the current state of conditions  
8 of confinement in the DOC; I'm sure the commissioner will also  
9 provide. In brief, the conditions remain unsafe for both the  
10 staff and detainee population. As recent as the first of this  
11 month, on two consecutive day, a detainee committed suicide and  
12 another detainee was severely assaulted by other detainees and  
13 sustained serious of injuries, including second degree burns.  
14 There's evidence that the suicide may have been preventable and  
15 the detainee assault may have involved officer complicity.

16 In late April, early May, there were five stabbings,  
17 slashings at five facilities. In four of these incidents,  
18 security lapses, failure to supervise or untimely intervention  
19 were at play. The commissioner will no doubt relate that  
20 slashings and stabbings were reduced from March to April. That  
21 indeed is the case. However, it is equally important to note  
22 that this reduced number is still extraordinarily high and in  
23 fact was the fourth highest since January of 2020.

24 As the commissioner will also no doubt relay, there  
25 are some downward trends in violence metrics. For instance,

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1 from January to April of this year, use of force incidents are  
2 down, as are detainee violence and assaults. Notwithstanding  
3 these, the numbers are still extraordinarily high. Based on  
4 the most recent data and recent site work conducted by the  
5 monitoring team, the patterns in practice that generate harm  
6 remain firmly in place in the DOC.

7 Let me at this point comment on some information that  
8 I received late in the day yesterday regarding several  
9 significant personnel changes; namely, both the chief of the  
10 department and chief of facility operations, the two most  
11 senior uniformed positions in the agency, will be leaving in  
12 the near term. The announcement of these changes may be -- a  
13 teletype at 6:30 p.m. yesterday -- will undoubtedly generate  
14 consternation throughout the agency and may give rise to  
15 reverberations, some of which may serve to further destabilize  
16 an already troubled and unstable agency. I relate this  
17 information to remind us of a potential for unintended  
18 consequences for in an agency that is in a state of profound  
19 flux and one that has not shown itself as especially adept of  
20 managing such a disruption in the past.

21 Having said that, I want to deviate from my prepared  
22 remarks again, if the Court will permit me. To give a shout  
23 out to the Department of Corrections on a very topical matter,  
24 I just reviewed earlier today the US Department of Justice  
25 promulgation of an updated use of force policy. That policy

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1 included an affirmative duty to intervene and stop excessive  
2 force. It also includes a duty to de-escalate before using  
3 force.

4 Approximately five years ago, the use of force  
5 directive was approved by the Court. That directive includes  
6 both provisions of the new US Department of Corrections policy.  
7 I think it can fairly be said that the DOC in some fashion was  
8 some five years ahead of the curve on this one. I just wanted  
9 to acknowledge that.

10 Now, allow me to make some general remarks on the  
11 action plan before the Court and the parties. My deputy  
12 monitor will momentarily articulate the reason the action plan  
13 is not yet a finished product and the reasons to push it across  
14 the finish line knowing time is of the essence.

15 As the monitoring team has reported ad nauseam  
16 barriers and obstacles to reform during the six and one half  
17 years of monitoring, this persistent problem has never been  
18 more in play than it has at this moment with the action plan.  
19 I have lost count of the times our office has been told by DOC  
20 and representatives of city agencies that we would like to do  
21 this, but we can't. The variations on this theme have been  
22 endless and persistent.

23 The great reservation my deputy monitor and I have  
24 with the action plan is not with the substance of it, where it  
25 sets out necessary measures to our reform this function, our

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1 reluctance is directly related to the issue of a means through  
2 which these necessary measures can be fully effectuated to  
3 bring about sustainable reform. That is, if the City and the  
4 commissioner have the necessary mechanisms readily at hand to  
5 overcome legal, procedural and contractual barriers to fully  
6 implement the substantive provisions of the action plan and  
7 will they act or will they in a few weeks or months yet again  
8 claim that some legal, contractual impediment makes it  
9 impossible for them to act or they have to develop a workaround  
10 that further delays reform. Six and a half years into that  
11 effort, that same refrain begins to wear thin.

12 As we said in our cover correspondence to the May 17th  
13 submission and reiterated in yesterday's cover correspondence,  
14 the monitoring team does not believe the action plan is viable  
15 without the inclusion of some narrowly drawn mechanisms to move  
16 through inevitable barriers that will arise during  
17 implementation of this huge and complex enterprise, which must  
18 ultimately address the implicated rights and interests of the  
19 plaintiff class.

20 Let me comment on barriers to reform. They may, in my  
21 view, take at least three forms. First, barriers within the  
22 control of the commissioner. I'll call these agency barriers,  
23 the bureaucratic practices and procedures that are entrenched  
24 in the agency. The current commissioner has already  
25 demonstrated a willingness to tackle agency barriers and he has

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1 created some workarounds that may work. But in the final  
2 analysis, these approaches are Band-Aids, not cures, and they  
3 unfortunately needlessly destabilize an already precarious  
4 agency.

5 The second form of barriers are those that exist  
6 within the City bureaucracies, it's what my office has tabbed  
7 as red tape impediments. City officials have likewise recently  
8 demonstrated a commitment to tackle these barriers. While this  
9 movement is certainly to be welcomed and encouraged, my office  
10 has reservations about whether their commitments to act can be  
11 successfully carried out in a complex bureaucratic setting  
12 where time is of the essence. The parties will no doubt weigh  
13 in on this issue.

14 Finally, it is the third form of barrier that gives us  
15 our greatest cause for concern. Those over which the City and  
16 the commissioner have no control, such as state laws,  
17 regulations, labor contractual issues, DOC requirements,  
18 procurement issues, contractual issues and other unanticipated  
19 barriers that might divert or impede the ability to timely  
20 address the requirements of the action plan and other court  
21 orders. No commitment on the part of the commissioner or the  
22 City, regardless of how genuine it may be, can overcome some of  
23 these entrenched legal measures that will inevitably arise,  
24 hence our overarching concern about the viability of the action  
25 plan if the City and the department do not have a structure and

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1 the authority to manage these.

2 My deputy monitor will now speak in more detail as to  
3 what the process to produce the action plan as finished product  
4 in the earlier discussion on the barriers to reform.

5 Thank you, your Honor.

6 THE COURT: Thank you, Mr. Martin.

7 Ms. Friedberg.

8 MS. FRIEDBERG: Good afternoon, your Honor. My name  
9 is Anna Friedberg, and I am the deputy monitor.

10 I echo the sentiments of the monitor and reiterate the  
11 gravity of these issues that are ever present in the city  
12 jails. The impact of the current conditions in the city jails  
13 are real and have resulted in an ongoing risk of harm to both  
14 incarcerated individuals and staff. This includes serious  
15 physical injuries, severe trauma and mental anguish and, in  
16 some horrifying cases, death. This has remained at the  
17 forefront of the monitoring team's work and considerations on  
18 next steps.

19 In my remarks, I plan to first share an overview of  
20 the action plan. I then plan to address three overarching  
21 issues that must be addressed to make the action plan a viable  
22 pathway forward and one in which the monitoring team can  
23 support and in turn provide the necessary findings to this  
24 court that the action plan properly addresses the implicated  
25 rights and interests. We believe the input from the Court at

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1 today's status conference is critical to help determine whether  
2 a viable action plan can be developed.

3 Before I get into the substance of the action plan, I  
4 must highlight one issue that implicates stakeholders beyond  
5 those here today. The length of stay for an incarcerated  
6 individual has increased exponentially since the beginning of  
7 COVID. Over 1,500 people are currently in jail over a year and  
8 almost 300 people have been in custody over three years. While  
9 the City has reported it is working with local DA's offices,  
10 which have heard similar refrains of backlogs, limited  
11 resources and limited court capacity. While we appreciate the  
12 practical reality of these issues, the current state of affairs  
13 demands that local DAs and the courts work with the City to  
14 find ways to address this ever increasing backlog of cases now.

15 I will now turn to the substance of the action plan.  
16 The action plan has two critical components. First, it  
17 identifies initiatives to be implemented as soon as possible to  
18 address the current risk of harm. And second, it builds the  
19 foundation for reform. I will take each in turn.

20 First, with respect to addressing immediate harm, the  
21 action plan includes operational initiatives that are most  
22 likely to ameliorate that harm. Some examples include using  
23 technology to ensure touring of the housing units actually  
24 occurs by requiring electronic touch points within the housing  
25 units to show that an officer was in fact up and physically

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1 walking around the housing unit. This is combined with more  
2 captains who will be assigned to working in the facilities to  
3 supervise officers on the housing units and ensure more  
4 meaningful tours occur. Further, the department is working  
5 strategically to deploy staff to specific facilities and units  
6 with high levels of violence to conduct more searches and  
7 support staff on those housing units. This work, along with  
8 many other initiatives in the action plan, which I'm sure the  
9 City and department will discuss today has already started and  
10 must continue today, tomorrow and into the future with as much  
11 haste as possible.

12 Second, the action plan sets about to build a strong  
13 foundational structure for the department that the monitoring  
14 team has long identified is missing from this agency. For this  
15 reason, the overall content of the action plan may not appear  
16 new or particularly novel. That is not to take away from the  
17 initiatives outlined in the action plan, as they are robust,  
18 critical, must be prioritized and, in some cases, reflect  
19 incredibly significant changes to current practice.

20 For instance, the department has laid out a new  
21 leadership structure that contemplates the infusion of external  
22 correctional expertise. If done right, this will provide  
23 mentorship, guidance and support to staff and catalyze a new  
24 way of doing business rather than remaining entrenched in the  
25 way things have always been done.

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1                   The action plan also specifically addresses the  
2 department's mismanagement of staff and the many initiatives  
3 needed to maximize the deployment of staff and eliminate abuse  
4 that has been causing a quagmire of dysfunction. These two  
5 examples are significant and the magnitude of their impacts  
6 cannot be minimized. As the monitor described earlier, many of  
7 these initiatives may have a reverberating and possibly  
8 destabilizing impact on the agency. So the implementation and  
9 transition of these revised practices must be appropriately  
10 sequenced and devised to avoid further destabilizing the system  
11 and inadvertently undermining the very initiatives intended to  
12 bring about change.

13                   The operational features of the action plan still  
14 require some refinements and consideration of the input from  
15 counsel for the Southern District of New York and plaintiffs'  
16 class counsel, which is underway. For instance, consideration  
17 of adding details about the implementation of certain  
18 initiatives such as touring, searches for contraband and  
19 addressing unlocked doors have been made. There have also been  
20 discussions about the current disciplinary process and further  
21 refinements to it.

22                   Finally, recommendations have been made to refine the  
23 ability to assess the efficacy and oversight of the action  
24 plan, including codifying additional site work done by the  
25 monitoring team, identifying certain data to be reported out

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1 and the approach to assess the compliance with a more select  
2 group of provisions.

3 We appreciate the Court may also have some questions  
4 or feedback that must also be incorporated into the action  
5 plan. We believe based on our almost decade of experience in  
6 working and negotiating with these very parties in this case  
7 that agreement can be reached on these outstanding operational  
8 issues in the very near term. However, the overarching issues  
9 of removing barriers to implementing these initiatives and  
10 sustaining progress is necessary for this action plan to  
11 actually be a viable pathway to reform. We are otherwise  
12 destined to continue the circular process that has mired  
13 reforms to date, and we will just simply be restarting the  
14 clock again.

15 There is absolutely no question that the City and  
16 department are working incredibly hard and taking some  
17 significant and important steps, but that alone is simply not  
18 enough at this juncture, even if this momentum is sustained for  
19 the long haul. The six and a half year history of this case in  
20 combination with the dire conditions in the jails do not afford  
21 any of us the luxury to just try again, even with the  
22 commitment to try harder with some new ideas and renewed vigor  
23 and passion to get the job done.

24 So what more is needed?

25 Likely, the most desirable outcome would be an action

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1 plan that provides the City and the department the necessary  
2 authority to manage the jails while also creating the ability  
3 to cut the red tape and overcome legal and contractual barriers  
4 to reform. Of course, this is all dependent on if such a  
5 scheme can be created. There is no playbook or readymade  
6 solution on how to disentangle the complicated web of  
7 dysfunction that has created these polycentric problems facing  
8 the department.

9 The monitoring team has evaluated the small number of  
10 remedial models from jails and prisons across the country that  
11 have faced problems similar to this department and found  
12 components that may work. But ultimately, we believe that a  
13 unique and creative approach must be devised specifically for  
14 this system that can also capitalize on the City and  
15 department's efforts to date and interest in maintaining as  
16 active management of the system as possible. We fervently  
17 believe that this group of stakeholders and this court are up  
18 to the challenge and that this work must be confronted head on  
19 right now.

20 There are three specific items that must be tackled.  
21 I will take each in turn.

22 First, addressing the legal and contractual barriers  
23 to reform. This falls into two buckets; those that we know  
24 now and those that will come up in the future. Those barriers  
25 that we are aware of now, they must be removed. I will share a

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1 few examples.

2                   First, with respect to the leadership of every  
3 facility, the monitoring team has been recommending for over a  
4 year that the department have the ability to select the right  
5 person to serve as the warden of each facility regardless of  
6 whether they had previously served in the uniform ranks.  
7 Currently, by law, the warden of each facility must be selected  
8 from the current uniform ranks and report to the highest  
9 ranking uniformed officer in the agency. While the department  
10 has developed a workaround to improve the overall leadership  
11 structure, it is just that, a workaround with some confusing  
12 reporting structures and the inability to select outside of  
13 uniformed ranks for the position of warden remains. This is  
14 not to say that all wardens must be replaced or removed. We  
15 are not saying that at all. But the commissioner must not be  
16 constrained in who he selects to serve in this role, given how  
17 critical it is to managing and running each of these  
18 facilities.

19                   The record is clear that leadership in the facilities  
20 are lacking and the workaround developed is simply insufficient  
21 at this stage. Court relief to remove the legal barriers  
22 precluding the commissioner from selecting the most viable  
23 candidate for the role of warden is needed. We note that  
24 additional barriers likely exist with respect to the  
25 department's ability to maximize the deployment of staff as

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1 outlined in the action plan and that must be addressed head on.  
2 The record to date of the City's efforts to address legal  
3 barriers and contractual issues related to staffing is tepid at  
4 best and insufficient to make the changes contemplated in the  
5 action plan, which is why an affirmative agreement or order is  
6 needed now that these barriers will not impede progress.

7 With respect to barriers that may arise -- there is  
8 absolutely no question that they will arise in the  
9 implementation of the action plan -- but we cannot yet  
10 anticipate each and every one of them. While viable  
11 workarounds may be developed in some cases, in other instances,  
12 the authority to execute a particular provision outside the  
13 present or existing authority of the commissioner or the City  
14 will be necessary.

15 One way this can be addressed is that when these  
16 obstacles are identified by the City, the department or the  
17 monitoring team, that the parties must be immediately advised  
18 and thereafter that there is an affirmative obligation for the  
19 City and the department to make an application to the Court for  
20 relief to remove those barriers and that that application is  
21 made as soon as possible.

22 The second overarching issue that we must address is  
23 how will progress be assessed during the pendency of the action  
24 plan. As noted at the outset, the City and the department must  
25 do all it can right now to address the conditions in the jails.

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Given the decades of mismanagement that has occurred, the overall state of the department will not be changed overnight or even in the near term. Significant and sustained momentum is needed now to move things forward. But simply setting arbitrary deadlines at the outset will not magically make these problems disappear. The right people need to be recruited, brought in and have the opportunity to not only get up to speed but the work on operational initiatives cannot be done in a vacuum and it must be done in concert with one another and the various leaders that are both recruited and currently situated within the agency. This will also require some significant trial and error. Of course, deadlines are necessary. But we cannot emphasize enough that this work must be appropriately synchronized to actually be impactful and for the progress to be made and realized.

I'd like to share a short anecdote of a case study that was presented during a recent Columbia University symposium about institutional reform for correctional systems. The Chicago juvenile system struggled with similar issues that we are faced with today. Their path toward reform involved a litany of different oversight and legal mechanisms, many of which failed. But success was ultimately achieved when the parties devised a plan with necessary legal structures and one that all parties could embrace. I highlight this case to illustrate how long it takes for progress to be realized. Even

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1 after the agreed upon relief was ordered, it was reported that  
2 the system, which includes just one facility with 300 beds,  
3 required two years to be stabilized and six to seven years to  
4 be reformed. That brings into stark focus the uphill challenge  
5 that we are facing and that there is no solution that will  
6 bring about change as fast as we would all like it to happen.

7 We think this case example reinforces the need that  
8 the parties and the Court have the ability to reasonably assess  
9 the current state of affairs on a routine basis, but it also  
10 underscores the need for realistic expectations to be devised  
11 to allow the action plan to take hold and determine if the  
12 current pathway is leading towards reform or whether a change  
13 in approach may be needed.

14 I should note that we do not intend to suggest that  
15 the Chicago model is the one that must be used in New York. In  
16 fact, we think a unique structure must be developed  
17 specifically for this system, which maintains eight facilities,  
18 one hospital ward and average daily population of 5,500  
19 incarcerated individuals and 9,000 uniform and civilian staff  
20 combined.

21 This leads the monitoring team to the final component  
22 that is necessary to the success of the action plan, which is a  
23 collective path forward. We strongly believe it is critical  
24 that all parties support the pathway forward. The parties must  
25 not be in a position to endorse this plan -- excuse me -- the

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1 parties must be in a position to endorse this plan and not  
2 simply state they will not object to it. Such a halfhearted  
3 approach to a plan of such import is doomed to fail and simply  
4 creates the legal construct akin to checking the box and makes  
5 further legal wrangling and litigation in the near term  
6 inevitable.

7 In closing, the monitoring team fully appreciates the  
8 three overarching issues: One, addressing legal and  
9 contractual barriers; two, assessing progress over time; and  
10 three, developing a collective pathway forward are complex and  
11 complicated and that there are likely significant transaction  
12 costs as we work to devise an action plan that is viable. But  
13 we believe this work cannot be avoided and creative legal  
14 mechanisms are necessary and that input from the Court during  
15 this conference is needed today to determine whether a solution  
16 can be crafted to get the department on the pathway to reform  
17 that everyone can embrace. We simply cannot kick the can down  
18 the road once again with essentially a fourth remedial order  
19 and we in good conscience cannot support that approach. The  
20 record has already demonstrated that is not enough.

21 If agreement cannot be reached, then we believe it's  
22 for the parties to outline their positions to the Court so the  
23 Court can determine the best path forward now. While I  
24 appreciate that we will discuss next steps at the end of this  
25 conference, I wanted at the outset to respectfully recommend

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1 that following this conference that the parties work together  
2 and advise the Court by June 8th if such an agreement can be  
3 reached and a final action plan is submitted or whether  
4 additional input and/or motion practice from the Court may be  
5 required. We appreciate time is of the essence and balance the  
6 necessary time to do the work we have set out and believe  
7 June 8th is the appropriate time to accomplish that.

8 I appreciate the Court's time, and I'm happy to answer  
9 any questions you may have.

10 THE COURT: Thank you, Ms. Friedberg. I will hold my  
11 questions until I have heard from everyone.

12 Now, we'll turn to counsel for the government.

13 Mr. Powell.

14 MR. POWELL: Thank you. For the record, this is  
15 Jeffrey Powell for the government.

16 The government would like to share its general views  
17 on the action plan, and then we'll address the issues with  
18 respect to the potential barriers that Mr. Martin and  
19 Ms. Friedberg have raised.

20 But before doing that, we would be remiss not to note  
21 that since we were all last here before your Honor about four  
22 weeks ago, two inmates have died, bringing the total deaths  
23 this year in City custody to five and the total since last year  
24 to 21.

25 About two weeks ago, the board of correction issued a

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1 report setting forth its investigative findings related to the  
2 first three deaths of this year. The report identified clear  
3 deficiencies in the staffing of the units where these inmates  
4 were housed and in how these units were monitored. The board  
5 found that there were no floor officers present on the units on  
6 the dates that two of the inmates experienced the medical  
7 emergencies that led to their deaths. With respect to the  
8 third death, the board found that the department staff did not  
9 conduct the required rounds every 30 minutes for over an hour  
10 before the inmate's medical emergency and, in fact, did not  
11 even check on the inmate's cell for at least three hours prior  
12 to his death.

13 That is the backdrop. That's where we are. The  
14 conditions at Rikers continue to be dangerous and unsafe, as  
15 the monitor stated, and in too many instances life threatening.

16 Moving to the action plan itself, at its core, it is  
17 largely a commitment to develop largely unspecified plans,  
18 initiatives, policies, strategies and other steps to address  
19 longstanding systematic failures. We acknowledge that some of  
20 the provisions in the plan include new and old action.  
21 Particularly, the commitment to restructure the leadership of  
22 the department, can finally bring in outside corrections  
23 professionals into the top ranks of this department. This is  
24 long overdue. The department is in desperate need of this type  
25 of outside expertise, as the monitor and the deputy monitor and

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1 others have repeatedly advised this court now for more than one  
2 year. Unfortunately, the plan is not specific about the  
3 timeline for onboarding these people into these very important  
4 positions. We expect that the City will act with all due haste  
5 to fill these positions, but no timeline is set forth.

6 Although we understand that it's not practical for the  
7 department to lay out every operational detail in a plan  
8 submitted to the Court -- we would not expect that -- we had  
9 expected to see more specifics and some shorter timelines for  
10 certain action items. I believe at the last conference your  
11 Honor requested that there be specific and concrete steps.

12 Last week, as everyone here knows, we engaged in many,  
13 many hours of discussions with the City, the department,  
14 including Commissioner Molina and the monitoring team to try to  
15 obtain more details on the specific operational steps and  
16 actions that the department plans to take. It is clear that  
17 many of these details have not been worked out yet. That is  
18 why we're not in a position to necessarily endorse this plan or  
19 whatever agreed upon language that we reach in the next week or  
20 two.

21 Ultimately, we understand the very specific  
22 operational details of how this plan is going to be carried out  
23 is probably not going to be memorialized in an agreement or a  
24 court order, and to be honest, no one has time for lawyers to  
25 haggle out and come up with that exact language.

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1           We do think the plan addresses the major systemic  
2 dysfunctional areas that have been identified over and over by  
3 the monitor. It leaves certain questions, though. For  
4 instance, it states the department shall revise its policies  
5 and procedures regarding sick leave and absence control.  
6 That's not clear to us.

7           Is the department planning on revising the policy that  
8 correction officers have unlimited sick leave due to previous  
9 abuses of this policy? Is the department going to require  
10 additional proof of illness from staff who repeatedly call out  
11 sick? We don't necessarily require that that be outlined in  
12 the plan, but the specifics need to be addressed and we don't  
13 really have the answers to that right now.

14           Secondly, the plan talks about appointing assistant  
15 commissioners of operations for every facility at the jail.  
16 However, as we have talked about with the City and the  
17 department, the relationship between this new position and the  
18 role of the wardens of every jail is very unclear. Who  
19 ultimately is going to be responsible for overseeing the  
20 day-to-day operations of each jail? To whom will the  
21 corrections staff at the jail report?

22           We are very concerned that the ambiguity between the  
23 rolls of these new positions and the existing wardens could  
24 undermine the ability of these new hires to effectively achieve  
25 real reforms inside the jails.

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1                   We understand that one reason for doing it this way  
2 was concerns with various state and local laws restricting who  
3 you can hire into uniformed ranks. We appreciate the City is  
4 finally bringing outside people in, but how that's going to  
5 work remains a little unclear.

6                   Finally, the plan says, the department shall  
7 immediately institute improved practices to ensure that routine  
8 touring is occurring, including the use of the tour wands by  
9 correction officers. Those are wands, my understanding is,  
10 that are touched on some sort of location throughout the jail  
11 to indicate that the officer has reached that point. But it is  
12 unclear what these other improved practices will be. This is  
13 really the core issue that we have now is whether staff are  
14 showing up at their jobs, doing their required rounds and  
15 checking on the safety of the inmates. And moreover, whether  
16 captains and other leaders at the facility level are making  
17 sure that this gets done. Given how important this issue is,  
18 we would have expected some more details to have been  
19 incorporated in this action plan that was weeks in the making.

20                   Ultimately -- and I'm not going to go through for  
21 reasons of time constraints the various general issues and  
22 questions we have, we have relayed those to the monitor and we  
23 appreciate their patience with us in doing that -- ultimately,  
24 regardless of the final version of this plan, the key point is  
25 that the success of these contemplated reforms have to be

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1 measured by actual outcomes and results achieved in the coming  
2 weeks. The real question will be whether the harm to inmates  
3 and corrections staff is substantially reduced in the very near  
4 future. At this point, results are the only thing that  
5 matters; not plans, not good ideas, not propositions, not the  
6 specific language that a bunch of lawyers may put on a piece of  
7 paper.

8 On Thursday, this past Thursday, we provided -- and I  
9 think Ms. Friedberg referenced this -- we provided the  
10 monitoring team with our proposed list of four quantitative  
11 measures that we think should be included either in future  
12 monitor reports looking at how this plan is being implemented  
13 or in separate reports submitted by the department to the  
14 Court. These measures in large part will track the areas of  
15 the plan, including the commitment to curb sick leave abuse,  
16 improve the way inmates are supervised, the need to redeploy  
17 staff, including captains, where they are most needed and to  
18 impose timely discipline on corrections staff who engage in  
19 misconduct. These are the key areas of the plan.

20 We also propose that the data include specific  
21 indicators that relate to violence in the facilities. We also  
22 propose that the report include specific indicators and metrics  
23 that would allow us to track whether the current extraordinary  
24 levels of violence are being reduced.

25 The monitor and the deputy monitor mentioned that they

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1 made some improvements this month compared to last month. But  
2 as the monitor also pointed out, that doesn't mean that the  
3 numbers aren't at extraordinarily high levels when viewed in  
4 the context of the last few years. So we have asked the  
5 monitor to include both data showing outcome measures on the  
6 specific components of the action plan, as well as on the  
7 levels of violence, so we can see if real change is happening  
8 and whether conditions are improving and whether inmates and  
9 staff are safer.

10 Moreover, we know that the monitor and his team will  
11 continue to make regular visits in the coming weeks to the  
12 jails to assess whether the operational changes referenced in  
13 the plan are actually being implemented, whether the posts are  
14 adequately staffed, whether basic security protocols were being  
15 followed and whether the dangerous and unsafe conditions are  
16 being addressed. These firsthand observations of actual  
17 progress will be invaluable in allowing us, the public and the  
18 Court to evaluate whether this plan is making a difference and  
19 translating it to safer conditions in the jail. In short, the  
20 more eyes in these facilities the better.

21 I was going to address the obstacles or barriers that  
22 the monitor and deputy monitor referred to and our views on  
23 those. At the last conference, we noted that extraordinary  
24 remedies are likely to be necessary to address the entrenched  
25 dysfunction of bureaucracy that have stymied prior reform

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1 efforts. We proposed two ideas. One was a possibility of  
2 executive orders by the mayor or the governor to remove the  
3 legal or bureaucratic hurdles. We also talked about the  
4 possibility of a stipulated court order that would allow the  
5 department to take actions that may arguably be inconsistent  
6 with certain state or local law or contractual requirements in  
7 order to address ongoing constitutional violations, which the  
8 PLRA allows for. The plan does not include either of those two  
9 options.

10 The government shares the monitor's well articulated  
11 concern about whether the department will be able to achieve  
12 real reform without more explicitly addressing how it will  
13 overcome existing barriers, including laws, regulations or  
14 contractual provisions that have led to years of dysfunction.  
15 Just like the monitor, over the last six plus years, we have  
16 been repeatedly told that many of the needed reforms and the  
17 monitor's recommendations couldn't be implemented because of  
18 various legal rules, laws or CBA provisions. Prior  
19 well-meaning commissioners -- and we have heard from them --  
20 have indicated that they have run into these obstacles in  
21 trying to reform the agency. We strongly agree with the  
22 monitor that now is the time to tackle these obstacles and  
23 barriers to reform.

24 Indeed, the government views the appointment of a  
25 federal receiver as one way to address these barriers and is

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1 continuing to consider that option, if the City cannot figure  
2 out on its own how to overcome these obstacles. We have  
3 proposed specific language to the City last week to address the  
4 two points that Ms. Friedberg made. One, to deal with current  
5 legal limitations that may present obstacles to addressing  
6 staff absenteeism and revising staff assignment and deployment  
7 practices. We have also addressed language to deal with the  
8 issue of how to address potential future legal obstacles as the  
9 department tries to implement other reforms and changes. To  
10 date, we have not received from the City an agreement on that  
11 language or a counterproposal.

12 Now, in May 2022 -- and I expect you'll hear this from  
13 the City -- the City appears to be taking the position that  
14 there are actually no legal barriers to implementing all of the  
15 items in the action plan. They can confirm that when they  
16 talk, of course. This causes us to question whether the  
17 contemplated reform efforts are actually substantially  
18 different than what has been tried and failed before and  
19 whether the actions to be taken will be sufficiently aggressive  
20 and drastic to achieve the necessary level of change.

21 Finally -- and then I will stop talking -- we would  
22 note that, like everyone else, putting aside all my other  
23 comments, the government very much hopes that this plan will  
24 succeed. We hope that this commissioner who is definitely  
25 engaging in good-faith efforts to reform this agency is able to

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1 quickly address the unsafe conditions. The administration,  
2 including the mayor and this commissioner, have asked us to  
3 give them a chance to implement their own plan to address the  
4 department's systemic failures. However, given the long  
5 history of failed reform efforts at Rikers, the government must  
6 be and is prepared to seek further relief, including  
7 potentially the appointment of a federal receiver, if  
8 necessary. Such an application will be necessary if, in the  
9 coming weeks and months, the department fails to make  
10 substantial and demonstrable progress in implementing the  
11 reforms, initiatives, systems and practices outlined in the  
12 action plan or if these efforts do not result in a substantial  
13 reduction to the risk of harm currently facing inmates and  
14 staff.

15                   Indeed, last week, we asked the City to include  
16 specific language in the ultimate action plan to be submitted  
17 to this court that would state that if the monitor makes the  
18 determination at some point that substantial progress is not  
19 being made that the City would agree to the appointment of such  
20 a receiver. The City has declined to include such language and  
21 rejected that approach. Unfortunately -- and we hope we don't  
22 get there -- this may lead to protracted legal proceedings  
23 before the Court at some point in the future. In this case,  
24 more time means more harm for inmates, staff and everyone in  
25 the jails. We would like to ask the City to reconsider its

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1 position.

2 If your Honor has any questions, we'll be happy to  
3 address them.

4 THE COURT: Thank you, Mr. Powell. I will, again, go  
5 on to hear everyone before I ask any questions.

6 So we'll turn now to counsel for the plaintiff class.  
7 Ms. Werlwas.

8 MS. WERLWAS: Good afternoon, your Honor and fellow  
9 counsel and parties.

10 When we were here before your Honor last month, the  
11 plaintiff class expressed our grave concerns that the City's  
12 proposed plans at that time were not sufficient to remedy six  
13 years of noncompliance with this court's order and to protect  
14 the plaintiff class. Those plans were too vague, too  
15 shortsighted, too weak. We shared the view then of the United  
16 States government, as expressed in its letter to the Court last  
17 month, that -- and I'm quoting here -- absent a commitment to  
18 expeditiously make the dramatic systemic reforms identified by  
19 the monitor and to revamp the agency's operations and  
20 satisfying practices -- I'm ending that quote -- but we would  
21 be left with no option other than to seek appointment of an  
22 independent receiver to implement reforms.

23 We left that conference last month looking forward to  
24 receiving from the City a plan that would articulate a  
25 different path, that would show the approach needed to resolve

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1 these problems short of receivership. We were hoping to  
2 receive a plan that would demonstrate that the City could  
3 succeed now where it has failed for six years.

4 Unfortunately, it would be an understatement to say  
5 that we found the action plan profoundly disappointing. We  
6 will not be consenting to entry of this plan as a proposed  
7 order of the Court.

8 We have conferred very extensively with the parties  
9 and the monitor over the last several days sharing our many  
10 concerns and, frankly, have found the City's intransigence and  
11 resistance to collective problem solving to be very troubling.  
12 Where we are left is concluding that the City's action plan  
13 does not show us a different path forward. It does not  
14 persuade us that the City appreciates the magnitude of the  
15 challenge it faces, nor has the political will to meet it.

16 It's absolutely true that there are some changes the  
17 City promises to make in this plan that will likely be  
18 improvements. The replacement of the central office uniformed  
19 leadership with civilian commissioners is significant. We hope  
20 that is helps and agree entirely that is long overdue.

21 So too the plan points to potential changes in staff  
22 deployment and staff absenteeism that might abate the horrific  
23 crisis of unstaffed jails. But in too many respects, the plan  
24 does not commit the City to making those changes about  
25 staffing. It does not commit the City to making deep or

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1 foundational changes that the City itself agrees are needed.  
2 It shrinks from or defers the hard choices. Instead of taking  
3 this opportunity to remove barriers, the City has resorted to  
4 the learned helplessness that creates danger for people in  
5 custody.

6 In our view, the action plan is essentially a plan for  
7 an action plan and that is largely where we were last month.  
8 There's no question that plans are necessary for action, but at  
9 this late stage plans for more plans are not enough. The  
10 magnitude of the harm that our plaintiff class is suffering  
11 demands more.

12 We want to give a few examples of some to concretely  
13 illustrate some of the deep deficiencies that we have seen in  
14 the plan. Throughout the plan, there are unacceptably vague or  
15 largely unenforceable provisions. As the United States  
16 government raised, the provision on sick leave, which is  
17 critical, critical to resolving the crisis right now, states  
18 merely that the department shall revise its policies regarding  
19 sick leave. It's frankly impossible to discern how this  
20 provision mandates change, provides a plaintiff class with any  
21 relief or why it will take three months to accomplish in the  
22 midst of a very dangerous crisis, when these are issues that  
23 have been identified for months.

24 Secondly, the plan, while it does include deadlines  
25 that were largely unspecified in last month's plan, those

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1 deadlines are inexplicable and protracted. As one example, why  
2 should it take two months for the City to determine which of  
3 its paid uniformed work staff are actually available to work a  
4 shift. It is hard to imagine a competent workplace that would  
5 need two months to identify its workforce, let alone how this  
6 represents responsible stewardship of the agent's significant  
7 custodial and fiscal duties.

8 Similarly, the plan suggests 90 days to appoint a  
9 staffing manager and another 90 days after that person has  
10 joined the agency to present a plan to deploy staff, and  
11 thereafter, a process of about three weeks for the monitor  
12 potentially to object to the plan and still more time for the  
13 department to respond, and only then are the changes to  
14 deployment and staff required to be implemented with no  
15 deadlines thereafter. Under this schedule, it will be December  
16 before the City is even arguably required to take action to  
17 change the staffing practices that are described in this plan.  
18 And that is simply too late for something that is a core  
19 correctional function and is the baseline for keeping people  
20 safe in the jails.

21 I mean, there are actions a plan could prescribe now.  
22 To be sure, we agree entirely with the federal government, not  
23 all the actions can be spelled out in the plan and, frankly,  
24 nor should they be. But there are known problems the City can  
25 commit to solving today. For example, DOC struggles to staff

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1 housing units and priority posts. And Mr. Austin, the  
2 consultant, and the monitor have identified a number of awarded  
3 posts in DOC as a barrier to flexibility and getting staff  
4 where they need to be. The City has said, it has the  
5 managerial authority under the labor laws to reassign staff  
6 with awarded posts now. So why can't they do it in 30 days?

7 They're bringing in a staffing manager, who can no  
8 doubt help create good processes and make fixes that are  
9 necessary, but that doesn't mean the City should wait six  
10 months to address a known issue it can resolve now. That would  
11 have an immediate impact on the staffing available to protect  
12 the plaintiff class.

13 Finally, we'll just make one other illustration of the  
14 deficiencies in the plan and those that we have raised with the  
15 City, and that is regarding the absence of a meaningful plan  
16 for remedying the impunity for staff who commit misconduct due  
17 to the failure of the disciplinary system. As the  
18 circumstances that led to the third remedial order of this  
19 court made clear, the City's noncompliance with the consent  
20 judgment's requirements that it impose timely and meaningful  
21 discipline have caused the use of force violations at the core  
22 of this consent judgment to continue. The added dimension of  
23 protracted, widespread absenteeism and the need to prevent  
24 abuses of unlimited sick leave further illustrate the critical  
25 need for a functional, timely disciplinary system. Yet, other

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1 than addressing timelines for the small minority of serious and  
2 egregious cases and promising a recruiting strategy for trials  
3 division staff, the plan does not provide a path forward or  
4 meaningfully address either the backlog of approximately 1,900  
5 cases that still exist, nor the City's inability to impose  
6 discipline prospectively in a timely fashion. We made clear  
7 discipline is not the only or even the primary function of  
8 workplace management, but the impunity for rule violations that  
9 the current workforce enjoys does pose a direct barrier to  
10 meaningful relief and we do not see the plan as providing a  
11 path forward.

12 We, in short -- and to sum up -- we did not see in  
13 this plan or in the discussions that we had in the weeks since  
14 the plan as providing a tenable alternative to a receivership  
15 remedy. We welcome creative problem solving. And we would  
16 certainly be open to hearing creative solutions that could  
17 point a path forward. We very much hope that there is one.

18 But as we raised last month, the idea or the prospect  
19 of dual tracks, we think that where we are left now is that,  
20 while the City certainly should continue to make all of these  
21 changes and every change that it can -- and we know that many  
22 people are working very hard to do so -- and we will continue  
23 to engage with the monitor and with the City to make these  
24 measures more robust. And we look forward to receiving  
25 information that shows that significant progress has been made.

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1 But we also believe that, at the same time, we will be  
2 preparing a receivership application that we hope we do not  
3 have to file. We would like to see changes that abate such a  
4 need. And we look forward to seeing rapid and immediate  
5 improvements in the protection for our clients, but the  
6 experience of the last week and the plan that we have seen do  
7 not give us optimism that this mechanism will be sufficient.

8 Thank you.

9 THE COURT: Thank you, Ms. Werlwås.

10 Ms. Greenberger.

11 MS. GREENBERGER: I am not going to add anything to  
12 Ms. Werlwås' comments at this time. Thank you, your Honor.

13 THE COURT: Thank you.

14 I now turn to Ms. Joyce and the commissioner.

15 MS. JOYCE: Good afternoon, your Honor. And thank you  
16 for the opportunity to appear before you today.

17 First, I want to reiterate that the City of New York  
18 is fully committed to this action plan and to taking the  
19 necessary steps, both immediately and in the long-term, to fix  
20 the problems that are plaguing Rikers. The City recognizes the  
21 urgency of the situation. Neither the status quo nor business  
22 as usual is acceptable. Rather, significant and drastic  
23 changes need to be made now. We have begun making those  
24 changes and are committed to continuing making those changes.

25 While we, the parties, may not all agree on what those

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1 changes need to be, I think we can all agree that we have the  
2 same goal, which is safe and humane jails for all that are  
3 detained at Rikers and all who work there. The City's action  
4 plan, which was submitted to the Court last week, lays out the  
5 steps necessary to achieve those mutual goals.

6 One of the most public steps that the City has taken  
7 to show its commitment to problem solving and immediate action  
8 is the formation of the Rikers interagency task force, which is  
9 co-chaired by the deputy mayor of public safety and chief  
10 counsel to the mayor, Brendan McGuire. The purpose of this  
11 task force is to make sure that every relevant city agency  
12 prioritizes all Rikers-related matters brought to their  
13 attention and cooperates fully to resolve the issues identified  
14 by the monitoring team in the Nunez litigation and to  
15 accomplish the objectives of the action plan in a timely,  
16 efficient and effective manner.

17 As a colleague described it in basic terms, the task  
18 force turns red and yellow lights to green lights and is  
19 available to expeditiously respond to requests from the  
20 department of correction and the law department. The task  
21 force is made up of members from city hall, the law department,  
22 the department of correction, the department of citywide  
23 administrative services, the department of design and  
24 construction, the office of labor relations, the office of  
25 management and budget, the office of administrative trials and

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1 hearings and correctional health services.

2                   In the few weeks that the task force has been meeting,  
3 it has taken necessary and drastic actions -- some of which I  
4 will discuss in a moment -- to immediately address issues  
5 occurring at Rikers. This is not an exhaustive list and it is  
6 not in any order of importance, but the agencies on the task  
7 force have accomplished the following: We have received the  
8 commitment of the Bronx district attorney's office to expedite  
9 cases for those who have been detained for over 365 days.  
10 We have referred cases of sick abuse to the department of  
11 investigation. We have received commitments from other city  
12 agencies to provide trial attorneys to the department's trials  
13 division to process the backlog of cases. We have increased  
14 incentives for those working with the department's trials  
15 division, including the waiving of the residency requirement,  
16 providing compensation for overtime worked, the piloting of a  
17 compressed work schedule and a reprieve of the two for one  
18 hiring requirements of the City.

19                   The task force has also secured \$20 million in funding  
20 to fix the broken cell doors at RMDC and RMKC. We have  
21 obtained approval from OMB for additional resources for OATH  
22 and for the department's health management division within  
23 days.

24                   We have expedited both vettings and appointments both  
25 at OMB and city hall so that the department could onboard staff

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1 from the outside more quickly, including the deputy  
2 commissioner of security, who has already begun, the deputy  
3 commissioner of trials, who begins on May 31st, the deputy  
4 commissioner of investigations, who began on May 9th, and the  
5 deputy commissioner of classification, custody management and  
6 facility operations, who will join the department in July after  
7 a job transition.

8 The department has also posted for the jobs of  
9 associate commissioner of operations, assistant commissioner of  
10 operations, senior deputy commissioner and deputy commissioner  
11 of administration. When candidates are chosen for those  
12 positions, they too will be expedited at vetting and  
13 appointments. We have received commitment to invest and  
14 prioritize mentorship, training and professional development  
15 for staff to give them the support that they need to be  
16 successful in this agency. Your Honor, this list of  
17 accomplishments will continue to grow as the group meets weekly  
18 to address the very pressing issues plaguing Rikers.

19 Mayor Adams brought on Commissioner Molina five months  
20 ago with a mission to reform the agency and Commissioner Molina  
21 is doing just that. He is a fresh set of eyes coming into the  
22 department to take a holistic review of how things are done and  
23 shaking up business as usual. While we recognize that the City  
24 is an institutional defendant and that failure by the  
25 institution to take meaningful action over the last six years

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1 cannot be ignored, since January 1st, there are new people  
2 responsible for ensuring that the institution does in fact take  
3 swift and significant action to instate the necessary reforms.  
4 As I have mentioned and as you will hear shortly from  
5 Commissioner Molina, the City under the Adams administration is  
6 already moving in the correct direction.

7 The other parties' desire to not permit the action  
8 plan to go forward without more is a step backward rather than  
9 a step forward, and it is a hitting of the restart button.  
10 Given the record of what the City and the department has  
11 accomplished over the past five months, we respectfully request  
12 that your Honor allow the defendants to continue to work to  
13 bring Rikers into compliance with all of the orders this court  
14 has issued.

15 We left the conference with your Honor three weeks ago  
16 tasked with developing a plan of action to make necessary  
17 changes to make the jails a safer place. We have not only  
18 developed that plan, but as the commissioner will describe, he  
19 has already begun to execute many of its components. And he  
20 and the City are ready, willing and able to continue the hard  
21 work of taking the department in a new and different direction.

22 Your Honor, in short, as has been raised by some of  
23 the parties, we do not need any extraordinary authority ordered  
24 by the Court nor the appointment of a receiver, not for all or  
25 any part of the jails' operations. Moreover, we respectfully

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1 submit that we do not believe there is a sufficient factual  
2 basis at this time for your Honor to make the findings  
3 necessary to support ordering such extraordinary relief, either  
4 by waiving or suspending provisions of state or local law or by  
5 appointing a receiver.

6 Under the prison litigation reform act, relief must be  
7 narrowly drawn, extend no further than necessary to correct the  
8 harm and be the least intrusive means to correct the harm such  
9 that no other relief will correct the violation. We have not  
10 reached that point. The actions being taken by the City in  
11 accordance with the action plan, which was drafted in  
12 conjunction with the monitoring team, are necessary to address  
13 the issues outlined in the various court orders in this case.  
14 For that reason, the extraordinary remedy of waiving laws or  
15 appointing a receiver does not conform with the requirements of  
16 the PLRA. All of the actions that are necessary to be taken to  
17 reform the department are within the City and the department's  
18 power and authority and we are ready, willing and able to  
19 execute that power and that authority. By asking for the City  
20 to consent to extraordinary relief now, we are being asked to  
21 anticipate potential legal challenges to the action plan or  
22 parts of the action plan, but we do not believe there is a  
23 sufficient factual basis for the Court to find under the PLRA  
24 based upon speculation. As I noted before, speculating that  
25 the City will fail based upon past actions of people who are no

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1 longer city employees is not warranted. Moreover,  
2 extraordinary powers is not the solution. It is not a panacea  
3 or a quick fix.

4 As Ms. Friedberg mentioned a few moments ago, it took  
5 two years for a receiver in Cook County to stabilize a single  
6 juvenile detention facility housing no more than 300 10 to 16  
7 year olds. Let us not speculate on how long it would take an  
8 outside receiver to stabilize an agency detaining over 5,400  
9 adults and over 7,000 employees. It would not happen overnight  
10 and stabilization certainly would not happen in a few short  
11 months.

12 The City has an action plan that it has already begun  
13 to implement with some demonstrated success and is going to  
14 continue implementing. We are taking concrete actions right  
15 now and we have a plan that we believe will work.

16 Thank you very much for your time, your Honor. I'm  
17 going to in a moment turn it over to my colleague, Commissioner  
18 Molina, and at the appropriate time I will be happy to answer  
19 whatever questions the Court may have.

20 THE COURT: Thank you, Ms. Joyce.

21 Commissioner Molina.

22 MR. MOLINA: Good afternoon. My name is Louis Molina,  
23 the Commissioner of the Department of Correction for the City  
24 of New York. Your Honor, thank you for opportunity to address  
25 the Court again and share with the Court where the department

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1 is today as we begin to implement the action plan developed  
2 jointly with the monitor.

3 I first would like to point out that, since my  
4 appointment, I have not been granted any extraordinary  
5 authority. But as I have previously stated, with the support  
6 of Mayor Adams coupled with my commitment to use all of the  
7 powers inherent in the office of the commissioner, I will share  
8 with you quantitatively what the department has been able to  
9 accomplish within approximately five months. It has been  
10 mentioned that the time frame is brief, but it is the time  
11 frame that this administration has been in charge.

12 Since a multi-strategy violence plan, which was  
13 focused on the Robin and Danvers center, also known as RMDC,  
14 went into effect, slashings and stabbings in April of this year  
15 versus March of this year have decreased 45 percent. When you  
16 compare April of this year to April of last year, the decrease  
17 is 24 percent. And month to date, May 1st to May 23rd, versus  
18 the same time last year, the decreases of slashings and  
19 stabbings at RMDC are 67 percent. The impact department-wide  
20 in April of this year versus March of this year also  
21 experienced a decrease of 35 percent. And month to date,  
22 department-wide versus the same time frame last year, the  
23 decrease is 52 percent.

24 The reinstatement of facility searches and tactical  
25 search operations, not only another RNDC, but at GRVC, has

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1 decreased slashings and stabbings at GRVC in April of this year  
2 versus March of this year by 45 percent. And when April of  
3 this year is compared to April of last year, the decrease is  
4 also 45 percent. And May 1st to May 23rd of this year,  
5 compared to the same time frame last year shows a decrease at  
6 GRVC of 80 percent. Note that these two facilities had been  
7 leading the department in slashings and stabbings.

8 When it comes to use of force incidents, which I  
9 recognize are still high, we have experienced double digit  
10 decreases since January of 2022 ranging from 15 to 35 percent.  
11 In calendar year to date, force incidences have decreased 27  
12 percent. RNDC, where the majority of our young adults are  
13 housed, has experienced month-to-month decreases since March.  
14 And department-wide assaults on uniformed staff calendar year  
15 to date have decreased 31 percent and assaults on nonuniformed  
16 staff have also decreased 32 percent.

17 I stated the last time I was in your court, Judge  
18 Swain, the importance of accountability and discipline in a law  
19 enforcement agency; two critical traits that were absent for  
20 far too long. In my time as commissioner, we have submitted  
21 calendar year to date, 150 medical incompetency cases to OATH  
22 for adjudication. In all of 2021, only 160 cases were  
23 submitted. I have finalized over 820 disciplinary cases to  
24 hold staff accountable, while at the same time closing out  
25 matters that allow the majority of staff members closure and

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1 the ability to improve their professional careers. These 820  
2 plus cases represent significantly more than what was done  
3 under the last two commissioners combined in the same time  
4 frame.

5 Your Honor, what the new leadership team has been able  
6 to accomplish in the last few months represents what can be  
7 accomplished under the mayor's leadership to leverage different  
8 departments of New York City government. This is further  
9 strengthened by his issuance of an executive order instructing  
10 specific departments to focus on the department of corrections'  
11 needs and by a commissioner with the will to exercise the  
12 expansive powers inherent within the office of the  
13 commissioner.

14 The action plan, which is crafted by the monitor, with  
15 significant input from my team lays out the work that is needed  
16 to address the four foundational issues raised by the monitor.  
17 This action plan addresses security practices, inadequate  
18 supervision, staffing practices and staff accountability. Your  
19 Honor, as the monitor has repeatedly stated, change must come  
20 from within. And with the support of Mayor Adams and my  
21 commitment and record of success in implementing reforms, when  
22 I successfully guided Westchester County Jail out of federal  
23 oversight, this department is no longer neglected and is now  
24 empowered under my leadership and the support of Mayor Adams  
25 with the ability to fix these problems from within.

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1                   We all, your Honor, are committed to this action plan.  
2                   The labor leaders that represent uniformed staff, the president  
3                   of the assistant deputy warden and deputy warden command  
4                   association, the president of the correction captains  
5                   association and the president of the correctional officers  
6                   benevolent association have all publicly supported the mayor  
7                   and I in implementing this action plan.

8                   I also want to talk about facility leadership, our  
9                   wardens. For too long, they have been placed in the position  
10                  to manage facilities that have been underinvested for years.  
11                  The wardens kept together the majority of staff that were  
12                  coming to work under a global pandemic that destabilized every  
13                  person in the world's way of life. They accomplished this by  
14                  mere gut. Because historically, they have been provided little  
15                  to no investment in their own development as managers. The  
16                  wardens and their teams were expected to perform miracles.

17                  Quite frankly, given that the department was abandoned  
18                  during the 2020 and 2021 years of the pandemic by the prior  
19                  administration, oversight bodies and many others that stayed at  
20                  home working remotely, as bad as things were, they could have  
21                  been significantly worse. The wardens and acting wardens did  
22                  all they could to keep day-to-day operations functioning,  
23                  fighting against a pandemic and outside that created a system  
24                  of chaos that manufactured an ecosystem of destabilization to  
25                  advance the surety that Rikers Island would be closed by any

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1 means necessary, no matter what the cost to staff and persons  
2 in custody.

3 Your Honor, what I have been able to accomplish to  
4 date has been with the assistance of the wardens, acting  
5 wardens and their respective teams. This has produced violence  
6 reductions and force reductions that I shared with the Court.  
7 Under my direct supervision and support, along with the  
8 infusion of other outside correctional professionals that will  
9 make up the new command staff structure of operations, which  
10 will include a senior deputy commissioner, deputy  
11 commissioners, associate commissioner and assistant  
12 commissioners working in concert with the wardens and their  
13 respective teams, I am confident that they will, as they have  
14 over the last few short months rise to the moment and meet the  
15 standards expected by this court, the mayor, myself and the  
16 societal expectations of a humane jail system.

17 The infusion of outside correctional professionals  
18 that will have under my authority the ability to reform the  
19 framework of the administration of these facilities to a model  
20 of success beyond a Nunez consent judgment. We are at a  
21 historic moment and this court will determine if we are given  
22 the opportunity to continue.

23 I am asking the Court to allow me the time I need to  
24 continue to build on what I have done via the action plan.  
25 Your Honor, we have not exhausted all remedies. And for once,

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1 what we have today that is critically different is Mayor Adams  
2 and myself, two people who advocated for reform. If you look  
3 at our histories, we have been so committed to reform that we  
4 have placed the protection of vulnerable populations before  
5 even our own past positions in law enforcement. Why? Because  
6 we were not willing to compromise our principles because it was  
7 literally our communities that were impacted.

8 Your Honor, the mayor and myself come from the same  
9 ZIP codes as the women and men that work at the department of  
10 corrections and are placed in the custody of the department of  
11 corrections on Rikers Island. And for too long, that is why it  
12 was so easy for the prior administration to abandon us. Past  
13 administration can talk about how they want a jail that if  
14 their own family members were there, they would want them to be  
15 safe. The difference between them and me, your Honor, is that  
16 my family was there. I did not live a life of privilege where  
17 every opportunity was handed to me in my life. I fought for  
18 this position and where I am today. And it's through that lens  
19 and life experiences that I view the importance of this work.  
20 It is not just about slogans for me or the mayor. It is about  
21 action and outcomes and holding people accountable. Your  
22 Honor, today is different day. And we have shown in a short  
23 time that we are different from the past. I absolutely believe  
24 in this action plan and do not need extraordinary authority to  
25 implement the remainder of the plan to achieve success. I am

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1 confident that we will succeed.

2                   Thank you, your Honor, for the opportunity to share  
3 those brief remarks with you. I'll make myself available for  
4 questions.

5                   THE COURT: Thank you, Mr. Commissioner.

6                   What do you say to the objections to the sort of  
7 general, vague undertaking language in the action plan and the  
8 absence of concrete data points or measurable steps in the  
9 action plan as submitted now?

10                  It is certainly commendable and encouraging of hope  
11 that things may change, but people are dying, people are being  
12 hurt right now. Staff are still not deployed in a logical way.  
13 And the parties here and the monitor are asking for ways in  
14 which they and I can, at very specific near term intervals,  
15 know what is going to happen and be able to assess whether real  
16 change reducing the violence and risk is happening in real  
17 time.

18                  MS. JOYCE: I think we can both address that. I will  
19 start first, your Honor.

20                  I know that Mr. Powell mentioned metrics, measurable  
21 metrics. Those have not been shared with the City or with the  
22 department. So if the department of justice would like to  
23 share the metrics that he was speaking about that would  
24 demonstrate to them that we are moving along in the action plan  
25 for us to consider, we would be happy to consider those. They

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1 just have not been shared with us yet.

2                   What I will say to the parties' characterizations of  
3 vagueness, I would respectfully disagree and state that this  
4 action plan, as set forth, sets forth concrete steps that the  
5 department needs to take. And where it does not set forth  
6 concrete steps, it has a reasonable timeline, which is an  
7 outside timeline -- where things can be done faster -- for  
8 these people who are coming in from the outside and infusing  
9 their expertise into the department for them to be able to come  
10 in, give their assessment so that those concrete steps can also  
11 be taken.

12                   So it's not that the plan is vague, it's there are  
13 concrete steps to be taken now. And when this infusion of  
14 external people starts coming in, starting in May through July,  
15 other additional steps will be taken based on the needs that  
16 they see the department has.

17                   MR. MOLINA: If I could just add, your Honor, as it  
18 relates to the plan and being specific, there are specificities  
19 to the plan. When we talk about the expansion of the security  
20 plan, which I initiated at RNDC, we did provide dates of when  
21 we will be expanding that plan to other facilities and we  
22 provided a date on or about June 20th. With these plans, we're  
23 required the shifting of staff.

24                   When it comes to infrastructure improvements, whether  
25 they be cell doors, installing polymer along plexiglas windows,

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1 we do have time frames of that construction being done. As  
2 we're getting time frames of when other materials will be  
3 arriving and the work will be done, we will be sharing with the  
4 monitoring team a schedule of that work being done.

5 Some of the provisions within the plan are technology  
6 solution oriented. We're in the process of talking with  
7 vendors, doing an RFP, evaluating their ability to satisfy the  
8 needs to deal with scheduling, staff accountability, scanning  
9 and equipment like that. Some of that has to be installed.  
10 And of course, we would inform and share with the monitoring  
11 team the time frame of when those issues are being done.

12 As it relates to policy issues, policies have been  
13 changed and we have shared policies, for example, like our home  
14 visit policy, which was already revised and promulgated  
15 yesterday. We shared that with the monitoring team.

16 When it comes to our health management division, I  
17 took swift action at the health management division, removing  
18 the prior warden, installing temporary new leadership at the  
19 health management division. We're talking about doctors, other  
20 healthcare providers that are providing services to ensure that  
21 we have checks and balances for our staff that is out. So that  
22 is not something we will be sharing with the monitoring team as  
23 we get permanent leadership within the health management, as  
24 well as any new technology solutions to account for checks and  
25 balances and accountability of staff.

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1                   We talked about expedited discipline. When it came to  
2 discipline --

3                   THE COURT: Mr. Commissioner, I'm sorry, I think that  
4 I didn't hear you clearly. When you said that, as to new plans  
5 for the health management division and technology of the  
6 division, it wasn't clear to me the specifics of that plan will  
7 be shared with the monitoring team or would not.

8                   MR. MOLINA: They would be shared with the monitoring  
9 team. So I have been in regular communication with the  
10 monitoring team as we have developments. Since some of the  
11 technology solutions would be on a time frame, we would share  
12 that schedule with them. If it's technology oriented, if it's  
13 staffing oriented, we would do the same, your Honor.

14                   THE COURT: Thank you.

15                   Please go on.

16                   MR. MOLINA: Other than that, to the new  
17 organizational command structure that we developed, the deputy  
18 commissioner of security began on May 16th. As the Court will  
19 recall, this was a request for a remedial order to have a  
20 securities operations manager. When that was brought to my  
21 attention, when I was first appointed, we immediately made sure  
22 that that position would have power and authority in order to  
23 make decisions as well as deploy staff. That's when we agreed  
24 with the support of the monitoring team to make that individual  
25 a deputy commissioner of security.

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1           It took time to find this individual and to vet  
2 candidates. Just to remind the Court, we are a law enforcement  
3 agency, so it does take time not only to find good, qualified  
4 candidates, but we need to make sure we're vetting these  
5 individuals because they're in high executive positions within  
6 the agency.

7           And recommendations that are made by Dr. James Austin  
8 regarding gang housing, when that recommendation was made, I  
9 immediately began rebalancing gang housing, which was something  
10 that I was going to do from the onset of my appointment. It  
11 was something that was talked about during my interview  
12 process. As well as when he recommended the discontinuation of  
13 the hub that was implemented by McKenzie and Co., I did that  
14 immediately.

15           And we have selected a finalist for the deputy  
16 commissioner of classification and custody management, which  
17 was a recommendation that Dr. Austin made, and that individual  
18 is transitioning from one job to come work with us. So  
19 sometimes, we have to manage other individual's schedules  
20 through this process.

21           But we will be as aggressive in doing recruitment in  
22 order to find the most highly qualified and experienced  
23 individuals to be part of our command structure.

24           THE COURT: What will be the relationship and  
25 specifically the division of authority as between wardens and

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1 these new deputy commissioners and staff?

2 Who, at the end of the day, decides how the wardens'  
3 facilities are managed day-to-day?

4 MR. MOLINA: That would be myself, your Honor.

5 So the way the structure would work is the wardens  
6 will report directly to me. That became effective yesterday,  
7 with the anticipation of the newchanges in leadership within  
8 our current command structure with the chiefs. We would have a  
9 structure where we would have a senior deputy commissioner of  
10 operations. Down from that structure, we would have three  
11 deputy commissioners; a deputy commissioner of security a  
12 deputy commissioner of classification and custody management  
13 and facility operations -- that is one person -- and a deputy  
14 commissioner of administration. Assisting with the management  
15 of sort of macro facility operations, we would have two  
16 associate commissions that would be reporting up to the deputy  
17 commissioner of custody management and facility operations and  
18 we will be embedding assistant commissioners within all of the  
19 facilities. So I'll be meeting one-on-one with the wardens and  
20 managing them directly to include the assistant commissioners  
21 that would be at these facilities.

22 THE COURT: Mr. Commissioner, you said that you have  
23 the support of the unions. And Ms. Joyce, you said that you  
24 believe there are no barriers. And so am I to understand that  
25 to mean that you do not expect to have collective bargaining

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1 agreement based pushback on the elimination of the rules that  
2 have allowed people to choose nonhousing unit spots and the  
3 other problems that have led to units not being manned and  
4 other staffing-related problems?

5 MR. MOLINA: Thank you for the question, your Honor.

6 No, the issues of deployment of staff, I do not see  
7 any collective bargaining barriers to that. We have within our  
8 policy managerial discretion to be able to deploy staff as  
9 needed to housing posts.

10 THE COURT: Thank you, Mr. Commissioner.

11 Turning back to the monitor and the deputy monitor for  
12 further response, in light of these comments, and then let's  
13 see where we go from there. I'll ask that people be as concise  
14 and pointed as possible in areas of further inquiry and  
15 proposed next steps, just looking at the clock. I  
16 unfortunately need to have a hard stop here by 4:45 at the  
17 latest and want to have clarity about where we're going next.

18 So Mr. Martin or Ms. Friedberg.

19 MR. MARTIN: Yes, this is Steve Martin.

20 THE COURT: Please continue, Mr. Martin.

21 MR. MARTIN: Yes, thank you.

22 The commissioner has taken what I would describe as a  
23 fairly hard, confident posture that he, with support by the  
24 City, can manage this agency with some success and dispatch,  
25 emphasis on dispatch. Because he does and has acted in certain

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1 areas with a degree of certainty and speed to effectuate his  
2 vision.

3 It may be, as I was listening to the parties and the  
4 questions of the Court, that if the parties can construct a set  
5 of metrics that reliably report out on the level of safety and  
6 at the same time monitoring the progress of the agency on these  
7 initiatives, that would maybe lessen the requirement to flesh  
8 out these timelines, to flesh out more information that the  
9 plaintiffs are rightfully and validly requesting. I'm not  
10 discounting the import of what the SDNY and LAS said.

11 But these matters are so cumbersome to cross all the  
12 Ts and dot all the Is, aren't we really, in the final analysis,  
13 interested in harm and reduction of harm with some dispatch?  
14 That's the ultimate outcome. If we have metrics that can  
15 measure that weekly, biweekly, monthly, whatever and gauge  
16 reliably that reduction in harm with the commitment, strategies  
17 and so forth the commissioner and the City have made here  
18 today, I'm not -- I mean, it's to the parties and the Court,  
19 I'm just almost thinking out loud here -- and I know SDNY has  
20 submitted a set of metrics that Ms. Joyce, I think, rightfully  
21 said have not been shared them, I know I have reviewed those  
22 metrics. My office is knee deep in metrics. And I think a set  
23 of really refined, reliable metrics can be developed.

24 Put them out there and let the commissioner go. Let  
25 him see if his vision and confidence can be realized. And I'm

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1 not so sure he needs to be wed or constricted or restrained by  
2 a lot of minutia that can find their way into these types of  
3 plans. I'm not saying I embrace it. I'm just saying I'm  
4 putting it out there for something that the parties can  
5 consider because I heard LAS and SDNY, they're interested in  
6 outcomes and the reduction of harm. And they want to be able  
7 to determine that as we move through this. So if that's the  
8 case -- now, we certainly can refine the action plan and so  
9 forth -- but I think where I would put -- what I would advise  
10 the Court and the parties, let's set about to define with as  
11 much precision and reliability as we can these metrics.

12 Put them out there. It's a score card. The  
13 commissioner is going to be so aware of what he's doing at any  
14 point in time on those metrics that where they are not trending  
15 or moving as they should, he is going to direct his  
16 attention -- I would assume, commissioner -- to why they're  
17 trending up or not trending down as much as you would like to  
18 see.

19 Is that not fair, what you would be doing with  
20 metrics, commissioner?

21 THE COURT: Mr. Commissioner, please respond.

22 MR. MOLINA: Yes, Mr. Martin, I would agree with you  
23 on that.

24 MR. MARTIN: Okay.

25 MR. MOLINA: If I could just add, Mr. Martin, that's

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1 why one of the first things I did was want to develop an office  
2 of management, analysis and planning because I wanted us to be  
3 a department that was very evidence-based in its  
4 decision-making and tracking of our successes.

5 MR. MARTIN: As your Honor and the parties all know, I  
6 rely heavily on my deputy monitor. I certainly want to give  
7 her an opportunity here to comment too. So if you would permit  
8 her to do that. Anna.

9 THE COURT: Thank you.

10 Ms. Friedberg.

11 MS. FRIEDBERG: Thank you, your Honor. This is Anna  
12 Friedberg speaking.

13 I think, ultimately, the monitoring team's position  
14 with respect to where the lapses in the plan may remain, but to  
15 the extent we're trying to discuss how do we proceed in the  
16 next coming days, weeks and months, I certainly think that  
17 Mr. Martin's suggestion that we work collaboratively with the  
18 parties to develop some metrics so that they can have some more  
19 contemporaneous information to see how things are going right  
20 now certainly is a feasible option.

21 I think there are some components of the action plan  
22 that do still merit some work, both because the City and the  
23 department when they proposed the plan on the 17th had some  
24 placeholders in there, as the judge herself may have noted, as  
25 well as the fact that the parties have raised a few issues

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1 between discussion among all probably do make sense to  
2 incorporate in some fashion.

3 I certainly echo, though, Mr. Martin's comments as  
4 well as actually Mr. Powell's that at a certain juncture, we  
5 need to kind of end the quote, unquote haggling over the plan  
6 and so finding some happy medium could be appropriate.

7 As I recommended at the outset, I believe that an  
8 approach in which we could come back within two weeks, by  
9 June 8th, with where we are on those pieces would allow the  
10 parties to flesh out their positions, whatever it may be.  
11 Certainly, everybody here was incredibly candid and frank with  
12 where they all thought this may go and what should happen next.  
13 And I think this may allow for that. So that would be my  
14 suggestion to you, your Honor.

15 THE COURT: Ms. Werlwas has her hand up, so I'll call  
16 on her first. And then it looked like Mr. Powell was beginning  
17 to speak.

18 Ms. Werlwas.

19 MS. WERLWAS: Thank you, your Honor.

20 We wanted to address two things. And certainly, we  
21 welcome discussions with the monitoring team about the  
22 contemporaneous information that Ms. Friedberg mentioned and us  
23 getting information of what is happening in the jails and  
24 wanted to make clear that we do support the SDNY's request for  
25 information and separately establishing indicators of success.

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1           I raised my hand to address the issue that the  
2 commissioner and the City and the monitors had addressed  
3 regarding barriers to relief. And I do so now because,  
4 initially, we withheld those topics because of the agenda sort  
5 of was set up differently, but in the discussions, we have all  
6 addressed those and did want to respond to the City's assertion  
7 and the monitor's framing about barriers very briefly because  
8 we think it's essential to understanding what happens next.

9           We appreciate the monitor's and share the monitor's  
10 identification of the issue of and the critical importance of  
11 identifying barriers to relief and think the monitor astutely  
12 identified some types of barriers. It's critical because in  
13 our discussions with the plan, in our view, the City has been  
14 unwilling to address the barriers that do exist. We want to  
15 try to cut through some of the muck here today. First, I would  
16 suggest that let's be honest about something that is one of the  
17 principal things that we mean by the sometimes euphemism  
18 barrier. And that is in great part the collective bargaining  
19 laws and the civil service laws. Those are certainly not the  
20 only legal barriers, constraints in which we all operate, but I  
21 think it's fair to say, quite honestly, those are very  
22 significant ones at this juncture of the case and given the  
23 action plan in front of us.

24           And the City has asserted today that there are no  
25 legal obstacles to implementing its action plan. And in a very

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1 narrow, technical sense, that is true, in our view, of most of  
2 these provisions of the plan, precisely because they don't  
3 require much, if any, action. When the only action required is  
4 to create a plan, then of course the City has managerial  
5 rights. It has managerial rights to create plans. The plan  
6 states that the City will revise its sick leave policy. We  
7 agree with the City, some such revisions would certainly not  
8 implicate labor rights, but clearly others patently would.  
9 This is not about speculation.

10 The sick leave policy is at the core of the  
11 instability in the jails right now, as it has been the source  
12 of massive staff absenteeism and unstaffed posts. It is not  
13 realistic to assume that making the dramatic and immediate  
14 changes that are needed to get enough officers in the housing  
15 areas to address the rampant absenteeism in this workforce,  
16 changing the allocation of posts and significantly accelerating  
17 what minimal employee discipline exists will be on consent of  
18 the unions.

19 So the vagueness and, frankly, insufficiency of the  
20 plan seems to be the only thing that saves it from collision  
21 with the admittedly very gray area that is the scope of  
22 collective bargaining agreements, which, for a very long time,  
23 in our negotiations, up until this past week, the City has  
24 identified as one of sources of its obstacles to implement  
25 change.

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1                   The concern and the reason that we shared with the  
2 City several proposals to mitigate these collisions that we  
3 think are very much ripe were designed to, in some way, to deal  
4 with problem that we see in the plan, which is that the  
5 prospect of labor and civil service conflict is distorting the  
6 relief that is suggested. We think this is very clear in the  
7 provision about facility leadership. The record undeniably  
8 makes clear and the parties have been negotiating for months  
9 about hiring external wardens and the barrier the City has  
10 asserted for the longest time has been certain correction law  
11 120 and other relevant laws. Yet, at the end of the day,  
12 rather than take very reasonable suggestions of ways to address  
13 those concerns have simply developed this inexplicably complex,  
14 convoluted structure of dual reporting in the facilities.  
15 That's what we mean by workarounds. And that is part of the  
16 dynamic that we think will plague this plan going forward and  
17 needs to be resolved now. It is the elephant in the room and  
18 it is causing great harm if we do not address it right now.

19                   And just the last, as I know time is brief, we would  
20 add one other type of barrier to the monitor's list that we  
21 think otherwise ably described the different kinds of barriers,  
22 and that's the political barrier. And by that, one of the  
23 fundamental problems we see with this action plan -- and it's  
24 about it philosophically, not about wording -- is its reliance  
25 upon hiring new people and external people, who are very much

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1       needed and the City would very much benefit from their  
2       expertise to work for the department, yet what we have seen so  
3       far is that -- as we saw with the firing of the disciplinary  
4       manager -- that these individuals will serve at the will of the  
5       New York City mayor and are subject to political controls on  
6       their ability to implement reform. And by kicking the hardest  
7       choices that are to be made down the line to these individuals  
8       who are not independent of the administration, but who are  
9       subject to the dissatisfaction of different constituencies, we  
10      raise the prospect that much of this reliance on these people  
11      will be for naught. And after they have -- they serve at will  
12      and will be dismissed. And if they are, then we're back to  
13      square one.

14           Those are the barriers we wanted to raise. We tried  
15      to come up with solutions to work around those. We would  
16      happily engage others, but we don't see any others on the table  
17      that the City hasn't rejected already in resolving those  
18      barriers to relief, and we think they're fundamental to the  
19      ability of this plan to succeed.

20           THE COURT: Thank you.

21           Mr. Powell, did you wish to speak?

22           MR. POWELL: Yes, your Honor.

23           I guess if I could just set forth our position as to  
24      what we would recommend or be agreeable for a path forward  
25      here -- I know time is getting short -- it's just the SDNY's

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1 position, to be clear, the plan that was submitted is the  
2 City's plan, that's their reform plan, that's how we view it.  
3 The monitor was certainly very involved in crafting it, but  
4 this is the City's plan of reform to fix the issues that have  
5 been identified over and over again. In our view, we were  
6 provided an opportunity to provide input, which we have done.  
7 We have provided that input, that feedback to the City and to  
8 the monitor. We think that the monitor and the City should  
9 take that feedback and finalize their plan and submit it to the  
10 Court as soon as possible. If it takes another couple weeks, I  
11 guess it takes another couple of weeks. We thought we made it  
12 very clear, we're not signing that and endorsing that plan as a  
13 fix. We just can't be in a position to do that. There's going  
14 to be a lot of operational stuff that's not in there.

15 So our proposal would be that that input be  
16 considered. We're happy to have further conversations. We're  
17 not trying to remove ourselves from the process. But that plan  
18 be finalized and submitted to the Court and be so ordered. We  
19 did provide a list of our thoughts on metrics and outcome  
20 measures that we think should be included in that plan. I  
21 believe we mentioned to the City that we had done that, but we  
22 had not provided those metrics to them. We are happy to do so.  
23 Because, again, we were providing input back to the monitor on  
24 our thoughts. I think that that plan should include a series  
25 of metrics that measure how they're doing on each of the items

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1 in that plan and how they're doing at protecting the safety and  
2 well-being of inmates and staff.

3 What those metrics are, the monitoring team has far  
4 more expertise than I do in that. We've thrown out our ideas.  
5 We'll circulate them after this call. And our recommendation  
6 would be that the plan include those metrics, that those  
7 metrics be included in the periodic reports that the monitor  
8 provides on a regular basis to the Court and that that be our  
9 path forward and that that be so ordered by the Court.

10 With respect -- final point -- with respect to the  
11 barrier issue, what I hear the City to be saying, and I just  
12 want it to be clear for everyone here, is that they do not  
13 foresee any legal, contractual, regulatory, state law barriers  
14 in reforming this department and bringing it into compliance  
15 with the consent decree and the remedial orders.

16 Legal Aid society raised an issue about there's no  
17 problem with coming up with a plan, that that wouldn't conflict  
18 with law. That's not what I'm hearing them say. If what I'm  
19 hearing is incorrect, they should clarify. But what I am  
20 hearing is their take, based on their own labor experts, is  
21 that there is no legal obstacle to implementing all of the  
22 steps and reforms that they think are necessary to bring the  
23 system into compliance with the Court's orders. And if that's  
24 correct, we can't second guess that, right. They have their  
25 labor lawyers, they're making a determination.

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1                   We would still request that and think that the plan  
2 should at the very least include some procedural mechanism that  
3 if barriers are identified in the future, that there be a  
4 mechanism in place, that if the monitor or the City determines  
5 there are potential legal obstacles that need to be dealt with,  
6 that they promptly bring that to the attention of the Court and  
7 the parties so that it can be dealt with through a potential  
8 court order or otherwise. That's the very least that I think  
9 need to be in there to give the monitor some comfort that if  
10 these barriers are out there that they be rapidly and promptly  
11 dealt with.

12                   So that would be our proposal, again, that the plan be  
13 finalized with our input, that it be submitted to the Court as  
14 soon as possible, that it include metrics that are agreed upon  
15 between the monitor and the City with our input and that it  
16 include some mechanism for barriers that are identified in the  
17 future to deal with. And I think that is our position after  
18 hearing all parties today and the monitor.

19                   THE COURT: Thank you.

20                   I do want to give Ms. Joyce and the commissioner an  
21 opportunity to respond directly to Mr. Powell's question about  
22 barriers, which goes further than the question that I asked.

23                   Is it your position that there are no legal,  
24 contractual, regulatory or state law barriers that you perceive  
25 coming into compliance with the consent decree via the

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1 proposals that you have made as to these core issues as a  
2 starting point?

3 MS. JOYCE: Yes, your Honor, that is accurate.

4 Everything that we have agreed to in the action plan,  
5 we believe that there are no legal impediments to us fulfilling  
6 our obligations under the action plan.

7 THE COURT: Thank you.

8 So what I would propose, taking up on what I've heard  
9 from Mr. Martin, Mr. Powell, Ms. Friedberg and Ms. Werlwais, is  
10 that you take, under the monitor's leadership, two more weeks  
11 to develop a further fleshed out proposed order that includes  
12 metrics and mechanisms for metrics, because I don't expect you  
13 to be able to identify each and every metric that would  
14 necessarily be helpful here. And I don't want this process to  
15 take too long. But it does certainly make sense for there to  
16 be metrics for realtime, concrete disclosure and measurement of  
17 progress. The proposed order should also include any further  
18 clarification of the language and expansion or change of the  
19 language that the proponents of the proposed order believe  
20 necessary or appropriate in the circumstances.

21 In the meantime, the department and the City must  
22 continue to proceed apace in implementing the changes that are  
23 being proposed and contemplated. This isn't a time out, but  
24 this is a matter of defining what will be court-imposed  
25 standards. And as they say, the proof of the pudding is in the

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1 eating, and so some more pudding making and some opportunities  
2 for testing and tasting along the way will be necessary, I  
3 think, to gain the confidence of the necessary stakeholders and  
4 of the Court. So that must be part of the process as well.

5 So there should be discussions. There should be a  
6 submission to the Court by June 8th.

7 Now, it may be that there is some explanatory document  
8 in identification of further issues at that time, but what can  
9 be presented to be so ordered must be. To the extent that the  
10 plaintiffs and the government believe that the proposal is so  
11 inadequate -- and I hope this doesn't happen -- but if they  
12 believe that it is so inadequate that we should have a third  
13 parallel track of the development of motion practice seeking  
14 particular relief from the Court and explaining to the Court  
15 the factual and legal basis on which the particular relief is  
16 sought, then a proposed timetable for and description of such  
17 contemplated motion practice should also come in on June 8th.  
18 I'm hoping that that won't be necessary. But it would be  
19 better, in my view, at this point, to have something besides  
20 general conceptual notions of there being a path for everyone  
21 to focus on in addition to the proposed action plan.

22 Ms. Joyce, you have your hand up.

23 MS. JOYCE: Thank you, your Honor.

24 I know that the deputy monitor and the Court suggested  
25 June 8th, but could we have until June 10th for the submission

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1 to the Court. I think those extra few days would be critical  
2 for us in a submission.

3 THE COURT: So that would be the Friday of that week?

4 MS. JOYCE: Yes, your Honor.

5 THE COURT: Is there any objection by the monitor or  
6 anyone else to the Friday?

7 MS. FRIEDBERG: Your Honor, can I just ask -- this is  
8 why these dates are always so troubling, if it could be --  
9 actually, nevermind, leave it the 10th. I was going to move  
10 the date. Nevermind, leave it the 10th. No objection from me.

11 THE COURT: June 10th is the submission date. And  
12 that submission should also include a proposal for reporting.  
13 And to the extent there is going to be a request for another  
14 conference in the near term, that should be included in the  
15 submission. And chambers can be alerted by the monitor as well  
16 to the extent that dates need to be worked out.

17 So I have described what I am looking for here on the  
18 record. So to bottom line it, by June 10th, a submission of a  
19 fleshed out proposed order to include metrics. And should a  
20 party or parties desire a proposed timetable for motion  
21 practice as well with any further explanatory information,  
22 affidavit in support, declaration in support of the order or  
23 request for further conference or court action that may be  
24 deemed necessary by the proponents of the order, that to be  
25 submitted by close of business on June 10th. And if you expect

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1 it to be contested, give me a proposed schedule for any further  
2 submissions that you see as essential for my consideration  
3 before acting on the proposed order.

4 Ms. Werlwås, your hand is up.

5 MS. WERLWÅS: Very quickly, your Honor, our team was  
6 conferring and looking at calendars while this discussion was  
7 happening, and we would request that the original date of the  
8 8th remain. The 9th and the 10th are both extraordinarily  
9 challenging for us, but the 8th would work.

10 MS. JOYCE: Your Honor, the 6th and the 7th are  
11 challenging for us, and it's the City and the monitoring team  
12 that are doing the bulk of the heavy lifting, so we really  
13 would ask for June 10th, if that's acceptable to the Court.

14 THE COURT: It will stay June 10th. You will need to  
15 work out your communications. It sounds like there's going to  
16 be a lot of pressure on the Wednesday of that week, but I leave  
17 it to you to work out the specifics.

18 Ms. Friedberg.

19 MS. FRIEDBERG: Your Honor, just one clarification  
20 with respect to what you're looking for in the submission of  
21 the 10th, I know that Mr. Powell had also raised one question  
22 with at least an issue of whether the action plan addresses the  
23 prospective barrier requirements. I did not hear in your list  
24 of items whether or not that was something you wanted addressed  
25 by June 10th or not. I would certainly submit that that should

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1 be something that should be considered, but certainly that's up  
2 to you, your Honor. I just wasn't sure if that was intentional  
3 or not to remove that request that he made.

4 I did not intentionally remove that. I think that you  
5 should endeavor to include a provision that provides some  
6 mechanism. Now, whether that mechanism is a contemplated  
7 submission to the Court that's not fleshed out in all of its  
8 mechanics or not, I can't say. But we certainly shouldn't lose  
9 sight of that point, and you should endeavor to include as  
10 meaningful a provision in that respect as you can in the  
11 timetable.

12 MS. FRIEDBERG: Thank you for the clarification, your  
13 Honor.

14 THE COURT: Thank you all for your undertakings and  
15 for your work. As many people have said, we are ultimately  
16 about results here that achieve reform and that, in the very  
17 near term, provide greater safety for those in custody,  
18 particularly at Rikers and those who work at Rikers. So I  
19 thank you for what you have brought before me today and for the  
20 very hard work that you are going to be doing over the next two  
21 weeks. I look forward to that further progress in this very,  
22 very crucial undertaking. And I thank the City for proposing  
23 these new structures and approaches and for the steps that have  
24 been taken, and I want to see the results. I am hoping that we  
25 will all see results that are meaningful.

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1                   Ms. Friedberg, you have your hand up again.

2                   MS. FRIEDBERG: Your Honor, this is embarrassing. I  
3 don't know how to turn it off.

4                   THE COURT: Just hit the same button and it goes off.

5                   MS. FRIEDBERG: I tried to do that a few times and  
6 failed. Thank you.

7                   THE COURT: That's fine.

8                   So is there anything further that we need to take up  
9 in the two minutes or so that I have left before we have to  
10 call this closed?

11                  MS. WERLWAS: No. Thank you.

12                  THE COURT: Thank you. Stay safe, be well, work hard.  
13 And again, thank you.

14                  (Adjourned)

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